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FM USMISSION USUN NEW YORK  
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INFO RUEHZO/AFRICAN UNION COLLECTIVE IMMEDIATE  
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UNCLAS SECTION 01 OF 02 USUN NEW YORK 001165

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E.O. 12958: N/A

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SUBJECT: USUN: COUNCIL RESPONSE TO SOMALIA PIRACY RESOLUTION

REF: STATE 129528

¶1. (U) This is an urgent action request. Please see paragraph 7.

¶2. (U) SUMMARY: In response to reftel instructions, USUN circulated our draft resolution on Somalia piracy to the P3 on the evening of December 9 and to the broader Council on December 10. Initial expert-level consultations were held on December 11. While no delegation was able to receive full instructions from capital on one day's notice, the meeting yielded significant concern over the broad authorities that the draft would give states to use force in the territory of Somalia. More detailed textual negotiation is expected at the next experts meeting at 10:00am on Friday, December 12. End Summary.

¶3. (U) During expert-level consultations on Thursday, December 11, the U.S. draft resolution on Somalia piracy received initial positive comments from France, the UK, China, Belgium, Croatia and Italy, while Vietnam, Panama, Costa Rica and Burkina Faso said that they were willing to engage constructively on the basis of our draft. Indonesia and South Africa indicated that they had reservations about the U.S. draft.

The core issue: force against pirates on land

¶4. (U) All delegations other than Libya and Italy raised concerns over the wording of operative paragraph (OP) 4, which allows states and regional organizations cooperating with the Somali government to use all necessary means in Somali territory and airspace against those suspected of piracy and armed robbery at sea. Delegations voiced concern over the broad authorities proposed by the U.S. and questioned what operations were contemplated that would necessitate such far-reaching provisions for the use of force. China worried that under the U.S. draft, third countries could be allowed to base troops in Somalia. Russia recalled that the authorizations contained in resolutions 1816 and 1846 were governed by the law of the sea but noted that the authority to use force in the current U.S. draft had no reference to any such international legal instrument. France, the UK, Russia and Burkina Faso asked for clarification of the word "ashore" in the U.S. text, noting that this did not necessarily limit the use of force to littoral areas.

¶5. (U) Delegations also voiced concern over the stated intent of the resolution to "interdict" suspected pirates, noting that determining jurisdiction over suspected pirates of Somali nationality detained in Somalia would be more

complicated than if they were detained at sea and asking what legal framework would govern such actions. South Africa and Indonesia said that actions against pirates on land could have the unintended consequence of exacerbating political instability in Somalia.

Other issues:

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¶6. (U) In addition to the core concerns referenced above, delegations also raised concerns over:

- Coordination of anti-piracy efforts: China, backed by Libya and Vietnam proposed language to promote UN coordination of anti-piracy efforts;

- Shipriders: France, Belgium, South Africa and the UK asked what legal framework would govern the resolution's Chapter 7 request that states deploy shipriders aboard vessels engaged in anti-piracy efforts;

- Ransoms: France and Russia objected to language on ransom payment in OP3 and OP6;

- Investigations: France and Panama objected to the requirement in OP10 that states make their citizens available for "forensic investigation at the first port of call," noting that if their nationals were rescued from pirates, their first priority would be to bring them home.

Comment and action request:

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¶7. (SBU) As currently worded, OP4 of reftel draft resolution is too broad to garner support even from our European allies.

In order to secure necessary authorities in time for the Secretary's ministerial meeting on piracy on December 16, we urgently need to know what types of specific actions are contemplated against suspected pirates on land. This information will help us to craft specific language in order to respond to our needs as well as the concerns of others on the Council. Should such operations include possible detention of suspected pirates, we anticipate the need for language that will address jurisdiction.

In addition, we urgently request Department input on applicable international law which could govern actions covered by our authorization. Citing such principles within our authorization paragraph (as in the precedent of resolutions 1816 and 1846) will help allay concerns that the authorization is overly broad.

Khalilzad